



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 3, 1996

Ms. Sandra C. Joseph  
Open Records Counsel/Disclosure Officer  
Office of the Comptroller of Public Accounts  
LBJ State Office Building  
111 East 17th Street  
Austin, Texas 78774

OR96-0868

Dear Ms. Joseph:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 30244.

The Comptroller of Public Accounts (the "comptroller") received a request for information related to an audit and for letter rulings issued by the comptroller. The requestor has been provided some of the information requested. However, you assert that part of the requested information is excepted from disclosure under section 552.101 of the Government Code, which provides an exception for information that is confidential by law. You also assert that some information is excepted from disclosure under section 552.107(1) of the Government Code.<sup>1</sup>

You have submitted to this office documents labeled as Items One through Five. You contend that the documents collectively labeled as Item One are protected from disclosure under section 552.107(1), as the documents are communications between the comptroller's attorney and the audit division. Section 552.107(1) excepts from disclosure those communications that reveal client confidences or the attorney's legal opinion or advice to the client. Open Records Decision Nos. 589 (1991) at 1; 574 (1990) at 3; 462 (1987) at 9-11. Section 552.107(1) does not except from disclosure a "basically factual recounting of events." Open Records Decision No. 574 (1990) at 5. It also does not except from disclosure "the attorney's mere documentation of calls made, meetings

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<sup>1</sup>You originally asserted that the information was excepted from disclosure pursuant to section 552.103(a), the litigation exception. You had previously informed this office that the information was related to a sales audit that was in the hearings redetermination process. It is our understanding that the hearing is now over and that section 552.103 is no longer applicable.

attended or memos sent . . . if no notes revealing the attorney's legal advice or the client's confidences are included." *Id.* We have marked the information that contains client confidences or attorney advice and opinion.<sup>2</sup>

You contend that the documents labeled as Items Two through Five are confidential under sections 111.006 and 151.027 of the Tax Code. Section 111.006(a)(2) provides that "all information secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers, or employees" is confidential. Section 151.027(a) provides that, with certain exceptions, "[i]nformation in or derived from a record, report, or other instrument required to be furnished under this chapter is confidential and not open to public inspection." Section 151.027(b) also states that information "secured, derived, or obtained during an examination of a taxpayer's books, records, papers, officers, or employees" is confidential.

Item Two contains handwritten notes by an auditor. You have marked certain information as "research notes regarding third-party taxpayer information that the auditor used for comparison purposes." The names of taxpayers and taxpayer numbers are not confidential. *See A & T Consultants v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995) (comptroller conceded that records containing taxpayer names and taxpayer numbers were not confidential and would be released to public). We are unable to determine what the marked numbers signify, but if it is information that is made confidential by sections 111.006 or 151.027, it must be withheld from disclosure.

You state that Item Three is a report of the taxable sales of a third-party taxpayer, and that the information was obtained from reports required to be filed with the comptroller. The document must therefore be withheld from disclosure as provided under section 151.027(a).

You explain that Item Four contains "audit lead cards recommending an audit investigation of certain third-party taxpayers." You have marked the information that you contend discloses the reasons for the audits. In *A & T Consultants v. Sharp*, 904 S.W.2d 668 (Tex. 1995), the court determined that chapter 552 does not require the comptroller to disclose reasons for audits. *Id.* at 679. Thus, the marked information in Item Four may be withheld from disclosure.

Item 5 consists of "private letter rulings issued by third party taxpayers." You seek to de-identify the rulings. The rulings submitted to this office do not appear to contain information made confidential under sections 111.006 or 151.027. The information at issue was not obtained by an examination of a taxpayer's books, records, papers, officers, or employees, nor was it required to be furnished to the comptroller. The

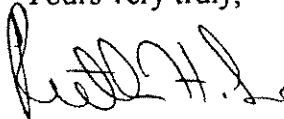
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<sup>2</sup>You also asserted that the information at issue was protected from disclosure under section 552.111. Since the scope of protected afforded by section 552.111 is no greater than that provided by section 552.107, we need not address your section 552.111 argument.

letter rulings at issue are not confidential and must be released without de-identifying the taxpayers' identities.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', written over a horizontal line.

Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 30244

Enclosures: Submitted documents

cc: Mr. Kevin J. Koch  
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